

APPENDIX D ENVIRONMENTAL STEWARDSHIP AND STREAMLINING VISION 100 -- CENTURY OF AVIATION REAUTHORIZATION ACT

1. INTRODUCTION.

a. Title III of Vision 100, signed into law by the President on December 12, 2003, is also cited as the “Aviation Streamlining Approval Process Act of 2003.” In Title III, Congress found that the Federal Aviation Administration (FAA), airport authorities, communities, and other Federal, State, and local government agencies must work together to develop a plan, set and honor milestones and deadlines, and work to protect the environment while sustaining the economic vitality that will result from the continued growth of aviation.

b. The Act directs the Secretary of Transportation to develop and implement an expedited and coordinated environmental review process for airport capacity projects at congested airports, aviation safety projects, and aviation security projects.

2. FAA POLICY. The FAA will adhere to the high standards of environmental review described in this Order for projects subject to environmental streamlining. The FAA will comply with all environmental protection requirements, maintain the integrity of the environmental process, and respect the environmental responsibilities of other agencies. Environmental streamlining will be used to give review priority to certain projects, manage timelines during the review process, improve and expedite interagency coordination, reduce undue delays, and emphasize accountability.

3. RELATIONSHIP TO OTHER REQUIREMENTS. The specific provisions in the Act on how the Secretary shall accomplish this mandate are consistent with DOT/FAA responsibilities under the National Environmental Policy Act (NEPA) and other environmental laws, as described in this Order. Nothing in the Act changes the FAA’s environmental obligations or the practice of seeking public comment. The Act supplements Executive Order 13274, Environmental Stewardship and Transportation Infrastructure Project Reviews, and FAA administrative streamlining practices. The Transportation Infrastructure Streamlining Task Force established by Executive Order 13274 may monitor airport projects that are subject to the coordinated and expedited review process under the Act.

4. PROJECTS SUBJECT TO STREAMLINING IN VISION 100. Three categories of aviation projects are subject to the Act’s streamlining provisions -- (1) airport capacity projects at congested airports, (2) aviation safety projects, and (3) aviation security projects.

a Airport capacity project at a congested airport. An airport capacity project is a project for the construction or extension of a runway (including any land acquisition, taxiway, or safety area associated with the runway or runway extension) and other airport development projects that the Secretary of Transportation may designate as facilitating a reduction in air traffic congestion and delays. A congested airport is an airport that accounted for at least 1 percent of all delayed aircraft operations in the U.S. in the most recent year for which data is available, and an airport listed in table 1 of the FAA’s Airport Capacity Benchmark Report 2001.

b. Aviation safety project. This is an aviation project that has as its primary purpose reducing the risk of injury to persons or damage to aircraft and property, as determined by the FAA Administrator, and is either needed to respond to a recommendation from the National Transportation Safety Board as determined by the Administrator, or is necessary for an airport to comply with 14 CFR part 139 relating to airport certification.

c. Aviation security project. This is a security project at an airport that is required by the Department of Homeland Security.

5. PROJECT DESIGNATION. The Act distinguishes in certain respects the designation of an airport capacity project at a congested airport from the designation of an aviation safety or security project for coordinated and expedited review under the Act. Projects may be designated that require the preparation of an EA, as well as those that require an EIS. In making a designation, the Administrator may consult with the Department of Homeland Security and any Federal or State agency that may have jurisdiction over environmental-related matters that may be affected by the project or may be required by law to conduct an environmental-related review or analysis of the project or determine whether to issue an environmental-related permit, license, or approval for the project.

a. Airport capacity project at a congested airport. Airport capacity projects at congested airports are more definitively defined in the Act than aviation safety and security projects. Airport capacity projects at congested airports are required to be subject to the coordinated and expedited environmental review process set forth in the Act. The Act states that its provisions shall apply to an airport capacity project at a congested airport whether or not the project is designated by the Secretary of Transportation as a high priority transportation infrastructure project under Executive Order 13274. The FAA Associate Administrator for Airports has the responsibility for designating runway construction and extension projects, consistent with the definition in the Act, and for recommending other projects for designation by the Secretary or his designee.

b. Aviation safety or security project. The FAA Administrator has the discretion to designate or not designate an aviation safety or security project. The Administrator may not delegate this authority. Once a project designation is made, the project shall be subject to the coordinated and expedited environmental review process set forth in the Act. The Administrator's designation is subject to the consideration of the following guidelines --

- (1) the importance or urgency of the project;
- (2) the potential for undertaking the environmental review under existing emergency procedures under the National Environmental Policy Act;
- (3) the need for cooperation and concurrent reviews by other Federal or State agencies;
- (4) the prospect for undue delay if the project is not designated for priority review; and
- (5) for aviation security projects, the views of the Department of Homeland Security.

c. The FAA Associate Administrator with the lead responsibility may recommend the designation of projects that meet the Act's definitions of aviation safety and security projects,

subject to the above guidelines. The recommending office will forward its documentation to the Office of Environment and Energy (AEE). AEE will be responsible for the uniform interpretation and application of the guidelines and will review each recommended designation and provide advice on project designation to the recommending office and the Administrator. The FAA may receive recommendations for project designation from the Department of Homeland Security. These recommendations will be subject to the same FAA internal review procedures.

6. COORDINATED AND EXPEDITED ENVIRONMENTAL REVIEW PROCESS. For each project that has been designated for the coordinated and expedited environmental review process under the Act, the provisions below apply. It is the responsibility of the FAA office that has the prime responsibility for the proposed Federal action and is leading the environmental review to apply the provisions within the purview of the FAA to specific projects.

a. Identification of Federal and State Jurisdictional Agencies. The FAA will identify, as soon as practicable, all Federal and State agencies that may have jurisdiction over environmental-related matters that may be affected by the project or may be required by law to conduct an environmental-related review or analysis of the project or determine whether to issue an environmental-related permit, license, or approval for the project.

b. Federal and State Agency Participation. Each identified Federal agency is required to put mechanisms in place to enable the agency to participate in the coordinated review process and to ensure completion of environmental reviews, analyses, opinions, permits, licenses, and approvals in a timely and environmentally responsible manner. State agency participation is at the discretion of the Governor of the State in which the project is located. A Governor, consistent with State law, may choose to participate in the coordinated review process and provide that all identified State agencies will be subject to the process.

c. Coordinated and Expedited Review Process. The Act directs the Secretary to develop and implement a coordinated and expedited environmental review process for designated projects. This review process is to provide for better coordination among the Federal, regional, State, and local agencies concerned with the preparation of EIS's or EA's. It is to provide for all project environmental reviews, analyses, opinions, permits, licenses, and approvals that must be issued or made by a Federal agency or airport sponsor, or by a participating State agency, to be conducted concurrently to the maximum extent practicable and to be completed within a time period established by the Secretary. Additional factors that are included within the Act's provisions to support and enhance a coordinated and expedited environmental review process are described below. The FAA may supplement these with measures that are considered to be best practices, consistent with environmental laws, regulations, and policies.

d. High Priority for Environmental Reviews. Each Federal agency is directed to give the highest possible priority to projects designated for coordinated review under the Act and to conduct their review, analysis, opinion, permit, license, or approval functions expeditiously. Participating State agencies are expected to perform similarly.

e. Memorandum of Understanding. The coordinated review process may be incorporated into a memorandum of understanding between the FAA and other participating Federal and State agencies and, if applicable, the airport sponsor. The use of a memorandum of understanding is discretionary, rather than required.

f. Interagency Environmental Impact Statement Teams. The FAA may, but is not required to, use an interagency EIS team to coordinate and expedite the environmental review process and to assist the FAA in preparing the EIS. If using an EIS team, FAA is required to invite Federal and State agencies and tribes with jurisdiction by law to participate on the team. Agencies with expertise may also be invited. In order to facilitate timely and efficient environmental review, team members shall agree on agency or Tribal points of contact, protocols for communication among agencies, and deadlines for necessary actions by each individual agency (including the review of environmental analyses, the conduct of required consultation and coordination, and the issuance of environmental opinions, licenses, permits, and approvals). The team members may formalize their agreement in a written memorandum.

g. Lead Agency Responsibility. The Act identifies FAA as the lead agency for projects designated for the coordinated and expedited environmental review process, and specifies that the FAA shall be responsible for defining the scope and content of EIS's, consistent with CEQ regulations. The Act further provides that any other Federal or State agency that is participating in the coordinated environmental review process shall give substantial deference, to the extent consistent with applicable law and policy, to the aviation expertise of the FAA. It is FAA's continuing responsibility to assure the integrity of aviation data used for environmental analyses and agency decision making.

h. Purpose and Need. For any environmental review, analysis, opinion, permit, license, or approval that must be issued or made by a Federal or State agency that is participating in the coordinated environmental review process and that requires an analysis of the purpose and need for a project, the Act provides that the agency shall be bound by the project purpose and need as defined by the Secretary, notwithstanding any other provision of law. The Act requires the Secretary to solicit and consider comments on project purpose and need from interested persons and governmental entities in accordance with NEPA. This may be accomplished through normal NEPA procedures for public and agency review. This provision of law does not change FAA's responsibilities described in this Order with respect to determining the purpose and need for a project. FAA will cooperatively review proposed project purpose and need statements with other agencies that have jurisdiction and decision making roles and will attempt to accommodate other agency needs, consistent with CEQ regulations and guidance, FAA program responsibility, and FAA substantive expertise on aviation proposals.

i. Alternatives Analysis. Similar to the provision on project purpose and need, the Act authorizes the Secretary to determine the reasonable alternatives to a project designated for the coordinated environmental review process. Any other Federal or State agency that is participating in the coordinated environmental review process shall consider only those alternatives to the project that the Secretary has determined are reasonable. The remainder of the guidance above on project purpose and need is also applicable to alternatives analysis with respect to the solicitation and consideration of comments, use of normal NEPA procedures,

compliance with the provisions of this Order, and consultation and cooperation with other agencies.

j. Reporting and Remediating Failure to Meet Project Deadline. The FAA will report to the Office of the Secretary if a Federal agency, State agency, or airport sponsor that is participating in the coordinated environmental review process has not met a deadline established for the project for an environmental review, analysis, opinion, permit, license, or approval. The Act directs the Secretary to notify, within 30 days of making a determination on such a missed deadline, the Senate Committee on Commerce, Science, and Transportation, the House Committee on Transportation and Infrastructure, CEQ, and the agency or sponsor involved about the failure to meet the deadline. The Act further directs, not later than 30 days after the receipt of such a notice, the agency or sponsor involved to submit a report to the Secretary, the Senate Committee on Commerce, Science, and Transportation, the House Committee on Transportation and Infrastructure, and CEQ that explains why the agency or sponsor did not meet the deadline and describes actions it intends to take to complete or issue the required review, analysis, opinion, permit, license, or approval. The FAA will make every effort to assist participants in the coordinated environmental review process to meet deadlines, or to remedy missed deadlines as rapidly as possible.

7. OTHER PROVISIONS. Vision 100 includes others provisions that may assist in facilitating the timeliness and completion of environmental reviews.

a. Airport Funding of FAA Staff and Consultants. The FAA Administrator may accept funds from an airport sponsor, including funds provided to the sponsor under the AIP program, to hire additional staff or obtain the services of consultants in order to facilitate the timely processing, review, and completion of environmental activities associated with an airport development project. The Office of Airport Planning and Programming is responsible for guidance and funding arrangements for reimbursable agreements.

b. Air Traffic Procedures for Airport Capacity Projects at Congested Airports. During the environmental planning process, FAA may consider flight procedures to avoid or minimize significant noise impacts of an airport capacity project at a congested airport that involves the construction of new runways or the reconfiguration of existing runways. If the Administrator determines that noise mitigation flight procedures are consistent with the safe and efficient use of the navigable airspace, the Administrator may commit, at the request of the airport sponsor and in a manner consistent with applicable Federal law, to prescribing the procedures in any Record of Decision approving the project. The Air Traffic Organization is the responsible FAA office for developing and approving noise mitigation flight procedures.

c. Flexible Funding of Noise Mitigation for Airport Capacity Projects and Other Airport Development Projects. The delivery of Airport Improvement Program (AIP) funding for noise mitigation can be enhanced and expedited by provisions in the Act that allow funding from the AIP noise set-aside for mitigation in FAA Records of Decision without additional approval under 14 CFR part 150. The Office of Airport Planning and Programming is responsible for AIP funding guidance.

d. Voluntary Air Quality Initiatives. The Act provides funding and emission credit incentives for commercial service airports in air quality nonattainment and maintenance areas to reduce airport ground emissions on a voluntary basis. While the purpose of these initiatives is not a streamlining one, emission credits that are granted to airports under this program may be used for current or future general conformity determinations under the Clean Air Act or as offsets under EPA's new source review program for projects on the airport or associated with the airport. Such provisions may reduce delays in complying with air quality requirements during environmental reviews. FAA and EPA are jointly responsible for issuing guidance for the air quality initiatives. Within FAA, the Office of Airport Planning and Programming is the responsible office.

e. Elimination of Duplication in Air and Water Quality Certification. A provision dating from 1970 to assure air and water quality protection by receiving a certification from the Governor of a state for certain major airport development projects has been eliminated. It is no longer necessary in view of protections in the Clean Air Act and Clean Water Act.

f. Issuance of FAA Environmental Guidance. The Act directs the Secretary to publish the final version of this Order no later than 180 days after enactment of the Act and, within an additional 180 days, to publish for public comment the revised FAA Order 5050.4B, Airport Environmental Handbook. Most of the projects that are subject to the streamlining provisions of the Act, and those that are of the greatest interest and concern, are airport capacity projects. FAA Order 5050.4B will include details on streamlining airport capacity project reviews.